

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

ELIGAH DARNELL, Jr.,	§	
Petitioner,	§	
	§	
VS.	§	CIVIL ACTION NO.4:05-CV-394-Y
	§	
DOUGLAS DRETKE, DIRECTOR,	§	
T.D.C.J., Correctional	§	
Institutions DIV.,	§	
Respondent.	§	

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS

In this action brought by petitioner Eligah Darnell Jr. under 28 U.S.C. § 2254, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on July 14, 2005; and
3. The Petitioner's written objections to the proposed findings, conclusions and recommendation of the United States magistrate judge filed on July 21, 2005.

The Court, after de novo review, concludes that Petitioner's objections must be overruled, and that the petition for writ of habeas corpus should be dismissed for the reasons stated in the magistrate judge's findings and conclusions, and as set forth herein.

In his written objections to the magistrate judge's report and recommendation, Petitioner contends that the application to him of the successive filing provisions of 28 U.S.C. § 2244 amounts to an unconstitutional suspension of the writ of habeas corpus. In *Felker v. Turpin*, 518 U.S. 651, 658-64 (1996), the Supreme Court specifically held that the restrictions on filing second or successive


habeas petitions "do not amount to a 'suspension' of the writ contrary to Article 1, § 9 [of the Constitution]."<sup>1</sup> Thus, Darnell's objection that application of the successive filing provision to him is an unconstitutional suspension of the writ, is overruled.

Darnell also contends that he is actually innocent of the underlying state-court conviction for burglary of a habitation. Darnell must now obtain permission to pursue such a claim from the court of appeals, consistent with the gatekeeping provisions of 28 U.S.C. § 2244(b)(2)(B)(ii). His objection on this basis is overruled.

It is therefore ORDERED that the findings, conclusions, and recommendation of the magistrate judge should be, and are hereby, ADOPTED.

It is further ORDERED that Petitioner's Petition for Writ of Habeas Corpus be, and is hereby, DISMISSED WITHOUT PREJUDICE to his right to file a motion in the United States Court of Appeals for the Fifth Circuit for leave to file a successive petition.

SIGNED July 26, 2005,



TERRY R. MEANS  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup>Felker, 518 U.S. at 664.